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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,375	11/27/2007	Simon Adriaan Troost	3135-061626	3718

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EXAMINER

WILLIAMS, STEPHANIE ELAINE

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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03/17/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@webblaw.com

Office Action Summary	Application No. 10/581,375	Applicant(s) TROOST ET AL.	
	Examiner STEPHANIE E. WILLIAMS	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-49 is/are pending in the application.
- 4a) Of the above claim(s) 35 and 43-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-34, 36-42 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 25-49 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>See Continuation Sheet</u> | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :10/22/07; 11/8/07; 8/13/08; 2/3/11.

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-44,48,49, drawn to apparatus.

Group II, claim(s) 45-47, drawn to method of manufacturing.

2. This application contains claims directed to the following patentably distinct species:

- I. Figures 1-4
- II. Figure 5
- III. Figures 6,7
- IV. Figures 8a-8c,9a-9c
- V. Figures 10a,10b
- VI. Figures 14,15

Once a species is selected, then one of the following sub-species below must be

- selected:
- A. Figures 11-11D,12
 - B. Figures 13a,13b

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3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. During a telephone conversation with Mr. John W. McIlvaine (Reg.No.34,219) on February 28, 2011 a provisional election was made without traverse to prosecute the invention of Species I, sub-species A (fig.11), group I, claims 25-34,36-42,49.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 35,43-48 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

Specification

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means", "comprises", and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The

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disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

6. The abstract of the disclosure is objected to because in line 8 of the abstract, after, "Such a" there is a period (.) that should not be there. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 25 -32,34,36-41,49 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshizane et al. (GB 2079183A).

9. The Yoshizane et al. reference discloses a dispensing device (figs. 18,19) consisting of a container (1) for the fluid with a valve (pg.2, col.1, lines 6,7) which is placed on the container and has an outlet opening (opening of 2), and a flexible tube (3) connected to the outlet opening for dispensing the fluid, wherein in a first state (see fig.19) at least a distal tube part (dispensing end of 3) is encased by enclosing means (5,5₂,5₁) for enclosing the distal tube part, and in a second state (see fig.18) the distal tube part is movable at least partly outside the enclosing means; and wherein the enclosing means (5,5₂,5₁,5_b) comprise a chamber (inside of 5_b) which is arranged on the dispensing device and which is inaccessible in the first state; and wherein the

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dispensing device is filled with a fluid (pg.1, col.1, line 16) suitable for human consumption (in order to intentionally harm someone); and wherein in the normal state the tube (3) comprises a bent tube part (4), that the bent tube part separates the distal tube part (dispensing end of 3) from the tube part (3) connected to the valve, and that the distal tube part can be moved outside the enclosing means (5,5₂,5₁,5_b) by changing the curvature of the bent tube part (4); wherein the bent tube part (4) is adapted to urge the distal tube part outside the enclosing means by means of resilient force; and wherein the dispensing device consists of a cap (5_b) which is provided with a cavity (inside area of 5_b) for receiving the distal tube part in the first state; and wherein the valve (pg.2, col.1, lines 6,7) is a valve which can be operated by an operating element (2) and that the operating element (2) is only accessible from the outside in the second state.

10. Claims 25 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Tugwood (4,865,230).

11. The Tugwood reference discloses a dispensing device (figs.1) consisting of a container (1) for the fluid with a valve (29) which is placed on the container and has an outlet opening (opening of 77), and a flexible tube (2) connected to the outlet opening for dispensing the fluid, wherein in a first state at least a distal tube part (82) is encased by enclosing means (100,102) for enclosing the distal tube part, and in a second state the distal tube part (82) is movable at least partly outside the enclosing means; and

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wherein the dispensing device is a bottle (1) and the valve (29) consists of a pump mechanism (col.2, line 58) which can be operated by the operating element (3).

12. Claims 25 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Beard (4,513,889).

13. The Beard reference discloses a dispensing device (figs.1) consisting of a container (20) for the fluid with a valve (21) which is placed on the container and has an outlet opening (through 49"), and a flexible tube (44") connected to the outlet opening for dispensing the fluid, wherein in a first state at least a distal tube part (end of 44") is encased by enclosing means (87,82,83,76) for enclosing the distal tube part, and in a second state the distal tube part (end of 44") is movable at least partly outside the enclosing means; and wherein the enclosing means (87,82,83,76) form part of the cap (76) and can be broken off the cap (by 83).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshizane et al., Tugwood, and Beard.

Having the enclosing means consisting of a sticker is a design choice base upon the needs of the in consumer and/or manufacturer. Whether the enclosing means consist of a tamper-evident component or a sticker, it does not affect the utility of the invention. Thus, having the enclosing means be a sticker fails to be patentably define over the prior art.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Leonard et al. (2,982,448) and Haber et al. (4,096,974) are other various types of dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. WILLIAMS whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. W./
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754